

4.3.3 (U) GUIDANCE ON THE USE OF RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY IN ASSESSMENTS AND PREDICATED INVESTIGATIONS

(U) Considering the reality of common ethnicity, race, religion, or national origin among many criminal and terrorist groups, some question how the prohibition against racial or ethnic profiling is to be effectively applied—and not violated—in FBI Assessments and Predicated Investigations. The question arises generally in two contexts: (i) with respect to an individual or a group of individuals; and (ii) with respect to ethnic or racial communities as a whole.

4.3.3.1 (U) INDIVIDUAL RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY AS A FACTOR

(U) The *DOJ's 2014 Guidance on Use of Race, etc.* permits the consideration of race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity information based on specific reporting—such as from an eyewitness. As a general rule, race, ethnicity, gender, national origin, religion, sexual orientation, or gender identity as an identifying feature of a suspected perpetrator, subject, and in some cases, a victim, is relevant if it is based on reliable evidence or information—not conjecture or stereotyped assumptions. In addition, the DOJ's 2014 Guidance on Use of Race, etc. permits consideration of such personal characteristics in other investigative or collection scenarios if it is relevant to an identified criminal incident, scheme, or organization. These examples illustrate:

- A) (U) The race or ethnicity of suspected members, associates, or supporters of an ethnic-based gang or criminal enterprise may be collected and retained when gathering information about or investigating the organization.
- B) (U) Ethnicity may be considered in evaluating whether a subject is—or is not—a possible associate of a criminal or terrorist group that is known to be comprised of members of the same ethnic grouping—as long as it is not the dominant factor for focusing on a particular

person. It is axiomatic that there are many members of the same ethnic group who are not members of the criminal or terrorist group; for that reason, there must be other information beyond race or ethnicity that links the individual to the terrorist or criminal group or to the other members of the group. Otherwise, racial or ethnic identity would be the sole criterion, and that is impermissible.

4.3.3.2 (U) COMMUNITY RACE, ETHNICITY, GENDER, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION, OR GENDER IDENTITY AS A FACTOR

4.3.3.2.1 (U) COLLECTING AND ANALYZING DEMOGRAPHICS

(U) The *DOJ's 2014 Guidance on Use of Race, etc.* and FBI policy permit the FBI to identify locations of concentrated ethnic communities in the field office's domain, if these locations will reasonably aid the analysis of potential threats and vulnerabilities to national and homeland security or an authorized intelligence activity, e.g., assist domain awareness for the purpose of performing intelligence analysis. If, for example, intelligence reporting reveals that members of certain terrorist organizations live and operate primarily within a certain concentrated community of the same ethnicity, the location of that community is clearly valuable—and properly collectible—data. Similarly, the locations of ethnic-oriented businesses and other facilities may be collected if their locations will reasonably contribute to an awareness of potential threats and vulnerabilities, and intelligence collection opportunities. Also, members of some communities may be potential victims of civil rights crimes and, for this reason, community location may aid enforcement of civil rights laws. Information about such communities should not be collected, however, unless the communities are sufficiently concentrated and established so as to provide a reasonable potential for intelligence collection that would support FBI mission programs (e.g., where identified terrorist subjects from certain countries may relocate to blend in and avoid detection).

4.3.3.2.2 (U) GEO-MAPPING ETHNIC/RACIAL DEMOGRAPHICS

(U) As a general rule, if information about community demographics may be collected, it may be "mapped." Sophisticated computer geo-mapping technology visually depicts lawfully collected information and can assist in showing relationships among disparate data. By itself, mapping raises no separate concerns about racial or ethnic profiling, assuming the underlying information that is mapped was properly collected. It may be used broadly - e.g., for domain awareness of all relevant demographics in the field office's area of responsibility or to track crime trends — or narrowly to identify specific communities or areas of interest to inform a specific Assessment or investigation. In each case, the relevance of the ethnic or racial information mapped to the authorized purpose of the Assessment or investigation must be clearly demonstrated and documented.

4.3.3.2.3 (U) GENERAL ETHNIC/RACIAL BEHAVIOR

(U) The authority to collect ethnic community location information does not extend to the collection of cultural and behavioral information about an ethnic community that bears no rational relationship to a valid investigative or analytical need. Every ethnic community in the Nation that has been associated with a criminal or national security threat has a dominant majority of law-abiding citizens, resident aliens, and visitors who may share common ethnic behavior but who have no connection to crime or terrorism (as either subjects or victims). For this reason, a broad-brush collection of racial or ethnic characteristics or behavior is not

helpful to achieve any authorized FBI purpose and may create the appearance of improper racial or ethnic profiling.

4.3.3.2.4 (U) *SPECIFIC AND RELEVANT ETHNIC BEHAVIOR*

(U) On the other hand, knowing the behavioral and life style characteristics of known individuals who are criminals or who pose a threat to national security may logically aid in the detection and prevention of crime and threats to the national security within the community and beyond. Focused behavioral characteristics reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community (not with the community as a whole) may be collected and retained. For example, if it is known through intelligence analysis or otherwise that individuals associated with an ethnic-based terrorist or criminal group conduct their finances by certain methods, travel in a certain manner, work in certain jobs, or come from a certain part of their home country that has established links to terrorism, those are relevant factors to consider when investigating the group or assessing whether it may have a presence within a community. It is recognized that the “fit” between specific behavioral characteristics and a terrorist or criminal group is unlikely to be perfect—that is, there will be members of the group who do not exhibit the behavioral criteria as well as persons who exhibit the behaviors who are not members of the group. Nevertheless, in order to maximize FBI mission relevance and to minimize the appearance of racial or ethnic profiling, the criteria used to identify members of the group within the larger ethnic community to which they belong must be as focused and as narrow as intelligence reporting and other circumstances permit. If intelligence reporting is insufficiently exact so that it is reasonable to believe that the criteria will include an unreasonable number of people who are not involved, then it would be inappropriate to use the behaviors, standing alone, as the basis for FBI activity.

4.3.3.2.5 (U) *EXPLOITIVE ETHNIC BEHAVIOR*

(U) A related category of information that can be collected is behavioral and cultural information about ethnic or racial communities that is reasonably likely to be exploited by criminal or terrorist groups who hide within those communities in order to engage in illicit activities undetected. For example, the existence of a cultural tradition of collecting funds from members within the community to fund charitable causes in their homeland at a certain time of the year (and how that is accomplished) would be relevant if intelligence reporting revealed that, unknown to many donors, the charitable causes were fronts for terrorist organizations or that terrorist supporters within the community intended to exploit the unwitting donors for their own purposes.

15.6.1.1 (U) DOMAIN MANAGEMENT

(U//FOUO) As part of Strategic Analysis Planning activities, the FBI may collect information in order to improve or facilitate “domain awareness” and may engage in “domain management.” “Domain management” is the systematic process by which the FBI develops cross-programmatic domain awareness and leverages its knowledge to enhance its ability to: (i) proactively identify threats, vulnerabilities, and intelligence gaps; (ii) discover new opportunities for needed intelligence collection and prosecution; and (iii) set tripwires to provide advance warning of national security and criminal threats. Tripwires are described in DIOG Section 11. Effective domain management enables the FBI to identify significant threats, detect vulnerabilities within its local and national domain, identify new sources and threat indicators, and recognize new trends so that resources can be appropriately allocated at the local level in accordance with national priorities and local threats.

(U//FOUO) The field office “domain” is the territory for which a field office exercises responsibility, also known as the field office’s area-of-responsibility (AOR). Domain awareness is the: (i) strategic understanding of national security and criminal threats and vulnerabilities that exist in the domain; (ii) FBI’s positioning to collect against those threats and vulnerabilities; and (iii) the ability to recognize intelligence gaps related to the domain.

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(U//FOUO) Through analysis of previously collected information, supplemented as necessary by properly authorized Type 4 Assessments, domain management should be undertaken at the local and national levels. All National Domain Assessments must be opened and coordinated by the Directorate of Intelligence (DI). Examples of domain management activities include, but are not limited to: collection and mapping of data such as I-94 data, census crime statistics, investigative information, entities in the domain; analysis of trends; source development; and placement of tripwires. See DIOG Section 11 for further discussion of tripwires. Further guidance regarding domain management and examples of intelligence products are contained in the FBIHQ IPG.

(U//FOUO) All information collected during a Type 4 Domain Assessment must be documented in the appropriate Assessment file (801H – 807H classifications), or if obtained without opening an Assessment, in another 800-series classification file as directed in the DI PG. Any time a Type 4 Domain Assessment begins to focus on specific individual(s), group(s), or organization(s), whose activities may constitute a violation of federal criminal law or a threat to the national security, or identifies persons or entities who may be actual or potential targets of or vulnerable to federal criminal activities or national security threats, a separate Assessment (Type 1 & 2 Assessment or a Type 3 Assessment) or Predicated Investigation must be opened to collect information regarding the particular person, or the threat or vulnerability.

(U//FOUO) FBIHQ DI provides specific guidance in its PG regarding, the opening, coordination and purpose for a field office and national domain Type 4 Assessments.